

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUN 24 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SIERRA CLUB; SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States; et
al.,

Defendants-Appellants.

No. 19-16102

D.C. No. 4:19-cv-00892-HSG
Northern District of California,
Oakland

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

Having heard argument on the Government's stay motion, the court is endeavoring to issue a decision before the July 4th holiday. Many issues arose at oral argument, however, that were not briefed by the parties. It would assist the court to have briefing from the parties on: (1) whether Plaintiffs have an equitable or constitutional cause of action for violation of the Appropriations Clause, and how *Dalton v. Specter*, 511 U.S. 462 (1994), bears on this question; and (2) whether Plaintiffs' cause of action should be treated as an APA claim, and, if so, whether it succeeds. The parties should also address whether the answer to question 2 affects the answer to question 1.

The Government's brief is due Thursday, June 27, 2019, at 9:00 am Pacific.

The Plaintiffs' brief is due Friday, June 28, 2019, at 5:00 pm Pacific. The briefs shall not exceed 8000 words.